

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RODNEY JAMES REDMOND,

Plaintiff,

v.

BRIAN NEUMAIER, JASON WITTERHOLT and
STEVE HELGERSON,

Defendants.

ORDER

11-cv-845-slc

On July 16, 2012, defendants filed a motion for summary judgment based on plaintiff's failure to exhaust his administrative remedies before filing his lawsuit. Plaintiff's brief in opposition to defendants' motion was due on July 31, 2012. Instead, plaintiff has filed a motion to dismiss voluntarily this case.

When a motion for voluntary dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because the defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice, unless defendants agree to a dismissal without prejudice. If the defendants do not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendants may have until August 13, 2012, in which to advise plaintiff and the court whether they agree to dismissal of this action without prejudice. If defendants agree to such a dismissal, the clerk of court is directed to close this case. If defendants do not agree to such a dismissal, plaintiff may have until August 23, 2012, in which to withdraw his motion for voluntary dismissal or to advise the court that he has no objection

to a dismissal with prejudice. If, by August 23, 2012, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 6th day of August, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge